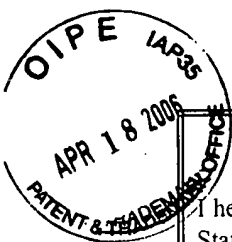


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Atty. Docket No. GET01/P303

**CERTIFICATE OF MAILING**

I hereby certify that this paper, together with all enclosures identified herein, are being deposited with the United States Postal Service as first class mail, addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on the date indicated below.

Dated: \_\_\_\_\_

4.14.06

  
Petie Taylor

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Art Unit : 1651  
Examiner : Francisco Chandler Prats  
Applicant : Stephen L. Tvedten  
Appln. No. : 10/687,489  
Filing Date : October 16, 2003  
Confirmation No. : 9765  
For : **BIOLOGICAL PESTICIDE**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

**RESPONSE TO ELECTION/RESTRICTION REQUIREMENT**

This is a response to the restriction requirement mailed March 27, 2006. In the Office Action, the Examiner required restriction to one of six inventions, identified as invention Groups I-VI under 35 U.S.C. §121. Applicant hereby elects invention Group I, which contains claims 1-11, 15-29, 39-49, 75, 77, 79 and 80, with traverse.

The Examiner stated that the inventions are distinct, each from the other because the inventions of Groups II-VI are related to Group I as combinations and subcombinations.

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Section 803 of the *Manual of Patent Examining Procedure* (MPEP sets forth two criteria for a proper requirement for restriction between patentably distinct inventions, requiring: (A) the invention must be independent or distinct as claimed; and (B) there must be a serious burden on the Examiner if restriction is required. Section 806.05(c) of the MPEP further states that a combination and subcombination can be shown to be distinct inventions, if either or both of the following can be shown: (A) that the combination as claimed does not require the particulars of the subcombination as claimed for patentability; and (B) that the subcombination has utility by itself or in other combinations.

The Examiner contended that invention Group II includes claims 12-14, 74 drawn to protease and another enzyme, whereas invention Group III, containing claims 30-38, 73, 74, is drawn to an additional enzyme-containing yeast fermentative. Claims 50-59 (Group IV) adds a nitrogen source. Group V, including Claims 60-63, 76 and 78, adds a plant oil or extract. Finally, Group VI, including Claims 64-72, adds alcohol, hydrogen peroxide, glycerin, borax, pest hormones, and growth regulators or analogs thereof, botanical pesticides, and soluble or suspendable aluminum compounds.

Applicant respectfully submits that the Examiner has failed to show that the process as claimed in invention Groups II through VI have utility by themselves or in other combinations. Moreover, it is respectfully contended that there is no serious burden on the Examiner such as to require restriction of the present application. All of claims 1-80 can and should be searched and examined together by the Examiner without requiring any serious burden.

Accordingly, Applicant submits that the restriction to one of invention Groups II through VI is improper and that the restriction requirement should be withdrawn. Applicant requests that invention Groups I and IV be rejoined and that all of claims 1-80 be prosecuted together in the present application. Accordingly, it is respectfully submitted that rejoinder of invention Groups I through VI is clearly in order.

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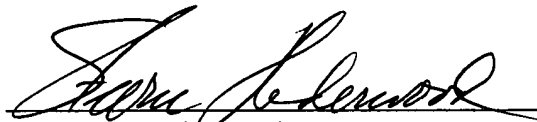
In view of the above election, with traverse, Applicant requests that all of claims 1-80 be considered and examined in this application. If the Examiner has any questions regarding this response or if the application can be readily placed in condition for allowance, Applicant respectfully requests that the Examiner call the undersigned attorney at the telephone number listed below.

Respectfully submitted,

STEPHEN L. TVEDTEN

By: PRICE, HENEVELD, COOPER, DEWITT & LITTON, LLP

Dated: April 14, 2006

  
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SLU/p